**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re:	)	Chapter 11
	)	
Carolina Sleep Shoppe, LLC	)	
	)	Case No. 13-32346
Debtor.	)	
	)	

SAM UNIVERSITY POINTE LLC'S LIMITED OBJECTION TO DEBTOR'S MOTION TO REJECT EXECUTORY CONTRACTS AND NON-RESIDENTIAL LEASES

SAM University Pointe LLC (the "Landlord"), by and through undersigned counsel, Moore & Van Allen PLLC, files this limited objection to the captioned debtor's Motion to Reject Executory Contracts and Non-Residential Leases (Doc. 45) (the "Motion").

JURISDICTION

1. The United States Bankruptcy Court for the Western District of North Carolina (the "Court") has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

BACKGROUND

2. On November 4, 2013 (the "Petition Date") the above-captioned debtor (the "Debtor") filed a voluntary petition under chapter 11 of title 11 of the United States Code with the Court.

3. On or about May 27, 2011, TKC University Center, LLC and the Debtor entered into a lease (the "Lease") of nonresidential real property (the "Premises") located at University Pointe Shopping Center (the "Center") in Charlotte, North Carolina. A copy of the first four pages and the signature page to the Lease are attached hereto as Exhibit "A".

4. On or about October 2, 2012, TKC University Center, LLC and the Landlord entered into a Purchase and Sale Agreement (the "PSA") pursuant to which TKC University Center, LLC sold the Center to the Landlord. A copy of the first page and the signature page to the PSA are attached hereto as Exhibit "B".

5. Pursuant to the PSA, on November 8, 2012, TKC University Center, LLC and the Landlord entered into an Assignment and Assumption Agreement (the "Assignment") pursuant to which TKC University Center, LLC assigned its rights and obligations under the Lease to the Landlord. A copy of the Assignment is attached hereto as Exhibit "C".

6. Landlord is the current landlord under the Lease and owner of the Center.

7. The Debtor owes Landlord past due pre-petition rent of $6,113.16.

8. The Debtor has also failed to pay the Landlord post-petition rent of $18,189.48 from and after the Petition Date through January 2014. A copy of an itemization of pre- and post-petition amounts due is attached hereto as Exhibit "D".

9. Upon information and belief, on November 18, 2013, the Debtor ceased operations at the Premises.

10. On November 18, 2013, the Debtor sent the Landlord e-mail correspondence indicating that it had vacated the Premises and that a rejection letter had been sent. A copy of the November 18, 2013 e-mail correspondence is attached hereto as Exhibit "E".

11. Landlord did not receive the rejection letter referenced in the November 18, 2013 e-mail correspondence from the Debtor.

12. The Motion was filed on January 10, 2014 and seeks to reject the Lease. The Debtor does not propose to retroactively reject the Lease although it does set forth the "Notice

Date" as to the leases subject to the Motion as dates which are prior to the January 29, 2014 hearing date of the Motion.

RELIEF REQUESTED AND JOINDER

13. The Landlord has no objection to rejection of the Lease. The Landlord does object, however, to the extent that the Debtor intends to obtain an Order approving an effective date for the rejection of the Lease that is retroactive to a date prior to the entry of such Order. Additionally, the Order should provide that any personal property of the Debtor at the Premises is deemed abandoned as of rejection of the Lease and that the Landlord may dispose of such property in its sole and absolute discretion without any liability to the Debtor or any third party.

14. A summary of the arguments and case law supporting the Landlord's position are succinctly set forth in Inland American Monroe Poplin, L.L.C.'s Limited Objection to Debtor's Motion to Reject Executory Contracts and Non-Residential Leases (Doc. 50) (the "Inland Limited Objection"). Rather than recite the arguments herein, the Landlord joins in and incorporates by reference the "Analysis" set forth in the Inland Limited Objection.

CONCLUSION

WHEREFORE, the Landlord respectfully requests that the Court approve the Debtor's rejection of the Lease and provide that: (a) rejection of the Lease is effective as of the date that an Order approving the rejection is entered; and (b) any and all personal property located at the Premises is abandoned and the Landlord may dispose of such property in its sole and absolute discretion without liability to the Debtor or any third party.

[***Remainder of page intentionally left blank; signature page follows.***]

Dated: January 24, 2014
Charlotte, North Carolina

MOORE & VAN ALLEN PLLC

/s/ Luis M. Lluberas
Luis M. Lluberas (NC Bar No. 38320)
Moore & Van Allen PLLC
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28202
Phone: 704-331-3548
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E-mail: luislluberas@mvalaw.com

Attorneys for SAM University Pointe LLC

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re:	)	Chapter 11
	)	
Carolina Sleep Shoppe, LLC	)	
	)	Case No. 13-32346
Debtor.	)	
	)	

CERTIFICATE OF SERVICE

I, the undersigned of MOORE & VAN ALLEN, PLLC, hereby certify that I am, and at all times hereafter mentioned was, more than 18 years of age; that on this day I caused a copy of the foregoing ***SAM UNIVERSITY POINTE LLC'S LIMITED OBJECTION TO DEBTOR'S MOTION TO REJECT EXECUTORY CONTRACTS AND NON-RESIDENTIAL LEASES*** to be served by either (i) electronic notification on those parties registered with the United States Bankruptcy Court, Western District of North Carolina ECF system to receive notices for this case or (ii) first-class mail, postage prepaid, as indicated below.

Carolina Sleep Shoppe, LLC
1897 Scott Futrell Drive
Charlotte, NC 28208

Richard S. Wright
Moon Wright & Houston, PLLC
(electronic notification via ECF)

Travis W. Moon
Moon Wright & Houston, PLLC
(electronic notification via ECF)

Linda W. Simpson
Office of the US Bankruptcy Admin.
(electronic notification via ECF)

Kevin M. Newman
Menter, Rudin & Trivelpiece, P.C.
(electronic notification via ECF)

Gabrielle D Phillips
KL Gates LLP
(electronic notification via ECF)

Robert L LeHane
Kelley Drye Warren LLP
(electronic notification via ECF)

Robert P. Laney
McELWEE FIRM, PLLC
(electronic notification via ECF)

I certify that the foregoing is true and correct this 24th day of January, 2014.

/s/ Luis M. Lluberas
Luis M. Lluberas

EXHIBIT "A"

SHOPPING CENTER LEASE

Between

TKC UNIVERSITY CENTER, LLC,
as Landlord

and

CAROLINA SLEEP SHOP, LLC, d/b/a America's Mattress,
as Tenant

Dated May 27, 2011

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Attachments:

Exhibit A -- Site Plan including Leased Premises and Pylon Sign Location
Exhibit B -- Landlord's Work and Tenant Improvements
Exhibit C -- Permitted Encumbrances
Exhibit D -- Legal Description of the Land
Exhibit E -- Pylon Sign

Schedule 1.1(f) -- Restricted Uses
Schedule 3.3 -- Initial Rules and Regulations of the Shopping Center

SHOPPING CENTER LEASE

THIS SHOPPING CENTER LEASE (this "Lease") is entered into as of the 27 day of May April, 2011, by and between TKC UNIVERSITY CENTER, LLC, a North Carolina limited liability company (together with its successors and assigns, "Landlord"), and Carolina Sleep Shop, LLC, d/b/a America's Mattress, a North Carolina limited liability company ("Tenant").

ARTICLE I
REFERENCE PROVISIONS, LEASED PREMISES AND TERM

Section 1.1 Reference Provisions.

(a) The premises hereby demised to Tenant from Landlord (the "Leased Premises") are hatched and/or designated as space on Exhibit A attached hereto and made a part hereof and have a front footage of approximately 32.5 linear feet, have an address of 5700 University Pointe Boulevard, Suite 109 and contain approximately 2,600 square feet. The Leased Premises are located in a shopping center (the "Shopping Center") known as, or which will be known as, University Pointe, which Shopping Center is located on that certain parcel of land (the "Land") situated in the County of Mecklenburg, State of North Carolina and more particularly described on Exhibit D attached hereto and made a part hereof.

(b) The term of this Lease (together with any and all renewal or extensions thereof, the "Term") shall be for a period of seven (7) years commencing on the Lease Commencement Date (as hereinafter defined). However, if the Term commences on a day other than the first day of a month, then the Term shall be extended by a partial month such that the expiration of the Term shall occur on the last day of the last month of the Term. A "Lease Year" shall be a period of twelve (12) months with the first Lease Year commencing on the Lease Commencement Date and expiring twelve (12) months thereafter and subsequent Lease Years commencing immediately following the expiration of the immediately preceding Lease Year.

(c) As long as Tenant is not in default hereunder beyond the applicable period of notice and cure, either at the time the renewal option is exercised or upon the commencement of the First Renewal Term (hereinafter defined), Tenant is hereby granted the option to renew the Term of this Lease as to the entire Leased Premises (but not portions of the Leased Premises) for two (2) successive periods of five (5) years in duration each. The first such renewal term with respect to the Leased Premises shall commence immediately following the expiration of the initial term (the "First Renewal Term"), and the second such renewal term commencing immediately following the expiration of the First Renewal Term (the "Second Renewal Term"). Tenant shall exercise its option to renew for the First Renewal Term by delivering notice to Landlord six (6) months prior to the expiration of the initial term, and shall exercise its option to renew for the Second Renewal Term by delivering notice to Landlord six (6) months prior to the expiration of the First Renewal Term.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

TKC UNIVERSITY CENTER, LLC, a North Carolina limited liability company

By: ______________________
Name: Kenneth R. Beuley
Title: Authorized Manager

TENANT:

CAROLINA SLEEP SHOP, LLC,
a North Carolina limited liability company

By: ______________________
Name: Anthony Poole
Title: owner

EXHIBIT "B"

EXECUTION VERSION

PURCHASE AND SALE AGREEMENT
(University Pointe Shopping Center, Charlotte, NC)

THIS AGREEMENT is made as of the 2nd day of October, 2012, between TKC UNIVERSITY CENTER, LLC, a North Carolina limited liability company (the "Seller"), and SAM UNIVERSITY POINTE LLC, a Virginia limited liability company or assigns (the "Buyer").

Background

Buyer wishes to purchase a shopping center known as University Pointe located at 5700 University Pointe Boulevard, in Charlotte, North Carolina (the "Shopping Center"); and

Seller, the owner of the Shopping Center, wishes to sell the Shopping Center to Buyer.

Therefore, in consideration of the mutual agreements herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller agrees to sell to Buyer and Buyer agrees to purchase the Shopping Center from Seller, subject to the following terms and conditions:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

1.1 Agreement means this Purchase and Sale Agreement, which shall supercede all prior agreements and understandings between Buyer and Seller concerning the sale and purchase of the Property.

1.2 Allocation Date means the day immediately prior to the Closing Date.

1.3 Broker means the real estate brokerage firm listed as Broker on Exhibit 1.3 of this Agreement. Participating broker(s), if any, are also identified on Exhibit 1.3.

1.4 Buyer means the person or entity named as Buyer in the introductory paragraph of this Agreement or Buyer's assignee if the Agreement is assigned pursuant to the terms hereof.

1.5 Closing means generally the execution and delivery of those documents and funds necessary to effect the sale of the Property by Seller to Buyer.

1.6 Closing Date means the date on which the Closing occurs.

1.7 Contracts mean all service contracts, agreements and other instruments concerning the ownership, management, operation and leasing of the Property. "Contracts" do not include the Leases.

1.8 Earnest Money Deposit means the deposits delivered by Buyer to Escrow Agent prior to the Closing under Section 2.1 of this Agreement, together with the earnings thereon, if any.

1.9 Effective Date means the date on which Seller and Buyer have each executed and delivered this Agreement or their respective counterparts. At the time that Seller and Buyer execute this Agreement, such executing party shall fax or email by PDF format, the signature page evidencing signing to all parties, and such fax or email shall constitute notice of the Agreement signing. Within twenty four

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

"BUYER":

SAM UNIVERSITY POINTE LLC,
a Virginia limited liability company

By:____________________
Printed Name: CHRIS PERRY
Title: MANAGER

Date: October 2ND, 2012

Tax Identification No: 46-0900941

"SELLER":

TKC UNIVERSITY CENTER, LLC,
a North Carolina limited liability company

By: TKC CXXVI, LLC, a North Carolina limited liability company, its Manager

By:____________________
Printed Name: Kenneth R. Beuley
Title: Authorized Member

Date: October 2, 2012

Tax Identification No: __________

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EXHIBIT "C"

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment"), is made and dated for reference purposes as of the 8th day of November, 2012, by and between TKC UNIVERSITY CENTER, LLC ("Assignor"), and SAM UNIVERSITY POINTE LLC ("Assignee"), both of whom may be referred to herein as the "Parties" and each of whom may be referred to herein as a "Party."

RECITALS

A. Assignor and Assignee are parties to that certain Purchase and Sale Agreement, dated October 2, 2012, as the same may heretofore have been amended and assigned (the "Purchase Agreement"). Unless otherwise expressly defined herein, capitalized terms used herein without definition shall have the same meaning given to such terms in the Purchase Agreement.

B. This Assignment is being made pursuant to the Purchase Agreement for the purpose of memorializing the assignment by Assignor to Assignee of: (a) those certain Leases described on Exhibit "A" attached hereto, (b) the Security Deposits described on Exhibit "B" attached hereto, (c) those certain Contracts described on Exhibit "C" attached hereto, and (d) the Personal Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Assignment of Leases, Security Deposits, Assigned Contracts and Intangible Properties. Subject to the provisions of the Purchase Agreement, effective as of the Closing, (a) Assignor hereby grants, assigns, transfers, conveys and delivers to Assignee, and Assignee hereby accepts the assignment of, the Leases described on Exhibit "A" attached hereto and the Security Deposits described on Exhibit "B" attached hereto and all of the right, title, estate, interest, benefits and privileges of the lessor or landlord thereunder; (b) Assignor hereby grants, assigns, transfers, conveys and delivers to Assignee, and Assignee hereby accepts the assignment of, the Contracts described on Exhibit "C" attached hereto, and (c) Assignor hereby transfers and assigns to Assignee the Intangible Properties.

2. Assumption of Obligations. Subject to the provisions of the Purchase Agreement, by acceptance of this Assignment, effective as of the Closing, Assignee hereby assumes and agrees to perform and to be bound by (i) all of the terms, covenants, conditions and obligations imposed upon the lessor or landlord under the Leases described on Exhibit "A" attached hereto accruing with respect to the period on or after the Closing, and (ii) all of the terms, covenants, conditions and obligations imposed upon the owner of the Property under the Contracts described on Exhibit "C" attached hereto accruing with respect to the period on or after the Closing.

3. Indemnification by Assignor. Assignor hereby agrees to indemnify, defend and hold harmless Assignee of, for, from and against any and all claims, demands, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or relating to the breach by Assignor of any of the obligations, terms and/or covenants of (i) the lessor or landlord under or pursuant to the Leases described on Exhibit "A" attached hereto, and/or (ii) the owner of the Property under or pursuant to the Contracts described on Exhibit "C" attached hereto, which obligations, terms and/or covenants accrue with respect to the period prior to the Closing; provided that (i) the provisions of this Section 3 shall be subject to the provisions of Section 10.2 of the Purchase Agreement and (ii) nothing in this Assignment shall increase or expand the liability of Assignor beyond that provided for in the Purchase Agreement relating to or arising out of any construction defects, latent or patent.

4. Indemnification by Assignee. Assignee hereby agrees to indemnify, defend and hold harmless Assignor of, for, from and against any and all claims, demands, liabilities; losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or relating to the breach by Assignee of any of the obligations, terms and/or covenants of (i) the lessor or landlord

under or pursuant to the Leases described on Exhibit "A" attached hereto, and/or (ii) the owner of the Property under or pursuant to the Contracts described on Exhibit "C" attached hereto, which obligations, terms and/or covenants accrue with respect to the period on or after the Closing; provided that in any action brought under this section against Buyer, the judgment or decree shall not be enforceable against Buyer unless and until the damages suffered by Seller as a result thereof shall equal or exceed $25,000, in which event Buyer shall be liable for all of Seller's damages from the first dollar thereof up to a maximum of liability of $350,000.00 in the aggregate.

5. Proration. Nothing contained in this Assignment shall constitute a waiver of or a limitation on any of the rights and obligations of the Parties pursuant to the Purchase Agreement concerning prorations.

6. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the respective Parties hereto.

7. Attorneys' Fees. In the event of any legal action between Assignor and Assignee arising out of or in connection with this Assignment, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs incurred in such action and any appeal therefrom.

8. Governing Law; Jurisdiction and Venue. This Assignment shall be governed by the laws of the State of North Carolina. The proper venue for any claims, causes of action or other proceedings concerning this Assignment shall be in the state and federal courts located in the County of where the Property is located in the State of North Carolina.

9. Counterparts. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

10. Cooperation. Assignor hereby agrees to and shall execute and deliver to Assignee any and all documents, agreements and instruments necessary to consummate the transactions contemplated by this Assignment.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Assignment as of the date first above written.

ASSIGNOR:

TKC UNIVERSITY CENTER, LLC, a North Carolina limited liability company

By: TKC CXXVI, LLC, a North Carolina limited liability company, its Manager

By: ______________________
Kenneth R. Beuley, Authorized Member

ASSIGNEE:

SAM ~~UNIVERSITY POINT LLC, a~~ Virginia limited liability company

By: ______________________

Title: ______________________

IN WITNESS WHEREOF, the Parties hereto have executed this Assignment as of the date first above written.

ASSIGNOR:

TKC UNIVERSITY CENTER, LLC, a North Carolina limited liability company

By: TKC CXXVI, LLC, a North Carolina limited liability company, its Manager

By:____________________
Kenneth R. Beuley, Authorized Member

ASSIGNEE:

SAM UNIVERSITY POINT LLC, a Virginia limited liability company

By:____________________

Title: Managing Member

EXHIBIT "A"
TO ASSIGNMENT AND ASSUMPTION

LEASES

1) Lease Agreement by and between TKC University Center, LLC, as Landlord, and The Cato Corporation, as Tenant, dated May 27, 2011, as amended by amendment dated October 26, 2011

2) Retail Lease Agreement by and between TKC University Center, LLC, as Landlord, and Anna's Linens Inc., as Tenant dated May 27, 2011, as amended by amendment dated November 11, 2011

3) Shopping Center Lease by and between TKC University Center, LLC, as Landlord, and Shoe Show, Inc. dated June 20, 2011, as amended by amendment dated November 28, 2011

4) Lease between TKC University Center, LLC, as Landlord, and Dots, LLC, as Tenant, dated March 30, 2011

5) Lease Agreement between TKC University Center, LLC, as Landlord, and Sally Beauty Supply, LLC, as Tenant, dated May 27, 2011

6) Shopping Center Lease by and between TKC University Center, LLC, as Landlord, and Carolina Sleep Shop, LLC dated May 27, 2011

7) Shopping Center Lease by and between TKC University Center, as Landlord, and Gregory R. Abrams and Ron Cohen, as Tenant, dated June 22, 2011

8) Agreement of Lease by and between TKC University Center, as Landlord, and General Nutrition Corporation, as Tenant, dated September 27, 2012

9) Shopping Center Lease by and between TKC University Center, LLC, as Landlord, and Stars Wireless, Inc., as Tenant, dated September 7, 2012

10) Shopping Center Lease by and between TKC University Center, LLC, as Landlord, and PFA University Pointe, LLC, as Tenant, dated June 29, 2012

11) Shopping Center Lease by and between TKC University Center, LLC, as Landlord, and Truyen H. Nguyen, as Tenant, dated June 29, 2011 as amended by amendment dated January 12, 2012

12) Shopping Center Lease by and between TKC University Center, LLC, as Landlord, and Del Mare, LLC, as Tenant, as assigned to Soalle, LLC, by assignment dated September 30, 2012

EXHIBIT "B"
TO ASSIGNMENT AND ASSUMPTION

SECURITY DEPOSITS

1. Carolina Sleep Shop, LLC	$5,200.00
2. Gregory R. Abrams and Ron Cohen	$3,825.00
3. Truyen H. Nguyen	$2,858.33
4. Del Mare, Inc.	$4,333.34
5. PFA- University Pointe, LLC	$26,542.02
6. Stars Wireless, Inc.	$2,800.00

EXHIBIT "C"
TO ASSIGNMENT AND ASSUMPTION

ASSIGNED CONTRACTS

1. Duke Energy Corporation "NC Service Agreement – Outdoor Lighting"

EXHIBIT "D"

University Pointe
America's Mattress

Outstanding Charges Prior 11/4/13

SEP 2013 Late Fee	50.00
OCT 2013 Rent	5,200.00
OCT 2013 CAM	414.77
OCT 2013 INS	39.66
OCT 2013 RETX	358.73
OCT 2013 Late Fee	50.00
Total	6,113.16

Outstanding Charges Post 11/4/13

NOV 2013 Rent	5,200.00
NOV 2013 CAM	414.77
NOV 2013 INS	39.66
NOV 2013 RETX	358.73
NOV Late Fee	50.00
DEC 2013 Rent	5,200.00
DEC 2013 CAM	414.77
DEC 2013 INS	39.66
DEC 2013 RETX	358.73
DEC 2013 Late Fee	50.00
JAN 2014 Rent	5,200.00
JAN 2014 CAM	414.77
JAN 2014 INS	39.66
JAN 2014 RETX	358.73
JAN 2014 Late Fee	50.00
Total	18,189.48

Grand Total	**24,302.64**

EXHIBIT "E"

-----Original Message-----
From: Tony Poole [mailto:Tony@americasmattressclt.com]
Sent: Monday, November 18, 2013 12:04 PM
To: Ann Gurnee
Subject: University Pointe

Ann,
I wanted to let you know our lawyer send a Chapter 11 lease rejection letter to you guys on Fri. We've completely moved out of the space, including removing the signs. There is a lockbox with a key on the door. The code is 0587.

Thanks,
Tony Poole

America's Mattress
Office 704-676-6102
Mobile 828-442-3384
Fax 704-910-6455
AmericasMattress.com/Charlotte
AmericasMattress.com/Triad
AmericasMattress.com/Raleigh